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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 JOE J.W. ROBERTS, JR.,

9 Plaintiff,

10 v.

11 SNOHOMISH COUNTY, *et al.*,

12 Defendants.

Case No. C16-1464-TSZ-JPD

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND RE-NOTING DEFENDANTS'
SUMMARY JUDGMENT MOTION

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14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before
15 the Court at the present time on plaintiff's motion for reconsideration of this Court's prior Order
16 denying his motion regarding witness issues, and on plaintiff's motion to stay or dismiss
17 defendants' pending summary judgment motion. The Court, having considered plaintiff's
18 motions, and the balance of the record, hereby finds and ORDERS as follows:

19 (1) Plaintiff's motion for reconsideration (Dkt. 103) is DENIED. Plaintiff seeks
20 reconsideration of this Court's August 10, 2017 Order denying his motion regarding witness
21 issues. (Dkt. 96.) In that motion, plaintiff detailed a number of impediments he faced in
22 attempting to effectively litigate this action, asserted that those impediments violated his right to
23 due process, and asked that the Court reconsider its previous denials of his requests for

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1 appointment of counsel. (*See* Dkt. 91.) The Court denied plaintiff's motion, concluding that he
2 had not established any violation of his due process rights arising out of the Court's denials of
3 his prior requests for counsel, and he had not demonstrated the existence of exceptional
4 circumstances sufficient to warrant the appointment of counsel. (Dkt. 96.)

5 The Court will ordinarily deny motions for reconsideration "in the absence of a showing
6 of manifest error in the prior ruling or a showing of new facts or legal authority which could not
7 have been brought to its attention earlier with reasonable diligence." LCR 7(h)(1). Plaintiff has
8 not demonstrated any error in the Court's prior ruling, nor has he identified new facts or legal
9 authority which would justify a different result. Plaintiff largely reiterates in the instant motion
10 arguments made in support of his multiple prior requests for appointment of counsel. While
11 plaintiff places particular emphasis this time on the challenges presented by his mental health
12 issues, the fact remains that the Court has considered these arguments previously and has
13 concluded that plaintiff's circumstances do not warrant the appointment of counsel. As the
14 Court has previously noted, plaintiff has shown ample ability to litigate this action without the
15 assistance of counsel and, thus, any motion to reconsider the denial of appointment of counsel
16 must be denied.

17 (2) Plaintiff's motion to stay or dismiss defendant's summary judgment motion (Dkt.
18 104) is GRANTED in part. Plaintiff asserts in his motion that the Washington Department of
19 Corrections has denied him access to his legal work which has prevented him from properly
20 researching and participating in this litigation. (*See id.* at 2-3.) Plaintiff also asserts that there is
21 discovery he has yet to receive from defendants and that he has yet to finish discovery. (*See id.* at
22 5.) Defendants object to plaintiff's motion to stay, arguing that plaintiff has intentionally refused
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1 discovery when presented to him, and has failed to show that he has not had adequate time to
2 obtain discovery or has diligently attempted to obtain discovery. (*See* Dkt. 105 at 1.)

3 To the extent plaintiff asserts that he has not yet finished discovery, he has not
4 established any entitlement to relief. The discovery deadline in this matter is October 13, 2017.
5 Any discovery which has not yet been initiated will not be permitted as the discovery deadline
6 has already been extended twice in this matter, and plaintiff has not shown good cause for yet
7 another extension. (*See* Dkts. 25, 51, 63 and 93.)

8 To the extent plaintiff complains about discovery which he has requested but has not yet
9 received, it appears that plaintiff is referring to 3000 pages of materials which were compiled by
10 defendants in response to plaintiff's second set of discovery requests. Those materials were sent
11 to plaintiff on a DVD in June 2017, but the mail was rejected by the Washington State
12 Penitentiary (WSP) mailroom because it contained an unauthorized CD and was ultimately
13 returned to defendants.¹ (*See* Dkt. 108-1 at 32-41.) Defendants declined plaintiff's request to
14 print the 3000 pages of documents and mail them to him, but offered to send the DVD containing
15 the documents to a representative designated by plaintiff who could make arrangements to print
16 the documents of interest. (*See* Dkt. 106 at 2; Dkt. 106-2.) Plaintiff apparently never designated
17 any such representative. (Dkt. 106 at 3.)

18 According to defendants, the documents responsive to plaintiff's second discovery
19 requests consist almost entirely of the personnel files of the individually named defendants, prior
20 personnel complaints made against defendants (none of which include an allegation of excessive

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22 ¹ Pursuant to Washington Department of Corrections policy, plaintiff is precluded from receiving
23 unauthorized CDs. (*See* Dkt. 108-1 at 34.) In addition, WSP apparently precludes inmates from accessing a
computer that can play DVDs. (Dkt. 106-2.)

1 force), and docket reports of previous excessive force lawsuits against Snohomish County. (*See*
2 Dkt. 106 at 2.) Also included in those discovery responses are three pages of plaintiff's
3 Snohomish County Jail visitation log which show the visits by Katrina Woolridge, and a brief
4 demonstration video of the OC canister used by defendant Acheampong in the incident at issue
5 here which shows that the OC spray is reddish-orange in color and not clear. (*Id.* at 2-3.)
6 Plaintiff has not demonstrated that any of these materials are likely to affect the outcome of
7 summary judgment and it would therefore serve no purpose to allow plaintiff additional time to
8 respond to the pending summary judgment motion based on their absence. This is particularly so
9 where defendants have provided plaintiff an option for obtaining the materials, but plaintiff has
10 made no attempt to avail himself of this option.

11 Of greatest concern to the Court is plaintiff's representation that he has not had access to
12 his personal legal materials for much of the time he has been in Washington Department of
13 Corrections custody. (*See* Dkt. 104 at 2-4.) Plaintiff has produced evidence demonstrating that
14 he has been persistent in attempting to locate and gain access to those materials, and that at least
15 some of the materials were not made available to him until after the time for him to respond to
16 defendants' summary judgment motion had passed. (*See* Dkt. 104 at 3, 28-35; Dkt. 108-1 at 1-
17 30.) The Court acknowledges that plaintiff's motion to stay defendants' summary judgment
18 contains a lengthy section in which he alleges factual discrepancies between his version of events
19 and defendants' evidence, similar to what might be included in a typical response to a summary
20 judgment motion. However, the Court is not satisfied that plaintiff has had a full and fair
21 opportunity to respond to defendants' motion given his lack of access to his personal legal
22 materials which, according to plaintiff, contain research notes, case law, and some discovery.
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1 (See Dkt. 104 at 2-4.) The Court therefore deems it appropriate to re-note defendants' summary
2 judgment motion to allow plaintiff additional time to respond.

3 (3) Accordingly, defendants' motion for summary judgment (Dkt. 99) is RE-NOTED
4 on the Court's calendar for consideration on **December 1, 2017**. Plaintiff's response to
5 defendants' motion is therefore due not later than **November 27, 2017**. Plaintiff is advised that
6 no further extensions will be granted and that the Court will not entertain any further requests for
7 additional discovery or appointment of counsel.

8 (4) The Clerk is directed to send copies of this Order to plaintiff, to counsel for
9 defendants, and to the Honorable Thomas S. Zilly.

10 DATED this 6th day of December, 2017.

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12 JAMES P. DONOHUE
13 Chief United States Magistrate Judge
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